

CIVIL CASE MANAGEMENT PLAN

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

Happy Hour Drinks Company, Inc.

vs

Case No. 3:24-cv-47 (TJM/ML)

Can Man, LLC et al.

IT IS HEREBY ORDERED that, pursuant to Rule 16(b), Federal Rules of Civil Procedure, a status and scheduling conference will be held in this case before the Honorable MIROSLAV LOVRIC, United States Magistrate Judge, on 04/16/24 at 2:30 a.m./pm at the United States Courthouse, at Room Number , at Albany, New York.

Counsel for all parties or individuals appearing pro se in the above-captioned action are directed to confer in accordance with Fed. R. Civ. P. 26(f) with respect to all of the agenda items listed below, no later than **twenty-one (21)** days before the scheduled Rule 16 Conference. Following that Rule 26(f) meeting, a report of the results of the conference, in the format set forth below, must be filed with the clerk no later than **seven (7) days** prior to the scheduled Rule 16 conference with the Court. Matters which the Court will discuss at the status conference will include the following: (insert a separate subparagraph as necessary if parties disagree):

1. **JOINDER OF PARTIES:** Any application to join any person as a party to this action shall be made on or before 08/31/24.
2. **AMENDMENT OF PLEADINGS:** Any application to amend the pleadings to this action shall be made on or before 08/31/24.
3. **DISCOVERY:** All discovery in this action shall be completed on or before 01/31/25.
(Discovery timetable is to be based on the complexity of the action)
4. **MOTIONS:** All motions, including discovery motions, shall be made on or before 01/31/25. **(Non-Dispositive motions including discovery motions may only be brought after the parties have complied with Section IX of General Order #25)**

5. **EXPERT WITNESS DISCLOSURE:** Plaintiff's Expert Witness disclosure shall be exchanged on or before 10/31/24 (at least 90 days before the close of discovery). Defendant's Expert Witness disclosure shall be exchanged on or before 12/15/24 (at least 45 days before the close of discovery). Rebuttal Expert Witness Disclosure shall be exchanged on or before 12/31/24 (at least 30 days before the close of discovery).
6. **MANDATORY MEDIATION:** A stipulation selecting mediator must be filed on or before 06/30/24. Mediation must be completed on or before 09/30/24.
7. **PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL:** The action will be ready to proceed to trial on or before 04/01/25. It is anticipated that the trial will take approximately 3 days to complete. The parties request that the trial be held in Albany, N.Y. (The proposed date for the commencement of trial must be within 18 months of the filing date).
8. Have the parties filed a Jury Demand? ☒ (YES) ☐ (NO).
9. What is the basis of the Court's subject matter jurisdiction? If it is diversity jurisdiction under 18 USC § 1332(a), does the complaint allege the citizenship of each party, including the citizenship of all members of any LLC or partnership? See 250 Lake Avenue Associates, LLC v. Erie Insurance Co., 281 F. Supp 3d 335, 341 (W.D.N.Y. 2017) ("[A]n LLC has the citizenship of each of its members for diversity jurisdiction purposes.") Diversity. Complaint does not include citizenship of actual members of LLC or partners
10. Are the parties subject to the Court's jurisdiction? Have all parties been served?
Yes.
11. What are the factual and legal bases for Plaintiff's claims and Defendant's defenses (including counterclaims and crossclaims, if applicable)?
Plaintiff alleges that defendant improperly mixed ingredients for certain beverages that it
had been retained to mix and can. Plaintiff alleges that as a result of the defendant's
negligence, the aluminum cans corroded and weakened resulting in the unmarketability
of Plaintiff's product

12. What factual and legal issues are genuinely in dispute?

Whether or not the defendant's actions resulted in the damage to the aluminum cans utilized to market the product.

13. Can the issues in litigation be narrowed by agreement or by motions? Are there dispositive or partially dispositive issues appropriate for decision on motion?

There may be some issues that can be narrowed by agreement, however, it is not known at this juncture whether dispositive actions are appropriate.

14. What specific relief do the parties seek? What are the damages sought?

Plaintiff is seeking monetary damages for lost profits as a result of the inability to sell certain products as well as damage to business reputation.

15. DISCOVERY PLAN

A. Mandatory Disclosures

The parties will exchange the mandatory disclosures required under Rule 26(a)(1) at least seven (7) days prior to the date of the Rule 16 conference, unless they have obtained prior approval from the assigned Magistrate Judge to extend that deadline.

B. Subjects of Disclosure

The parties jointly agree that discovery will be needed to address the following subjects: Mixing process, canning process, receipts of sales made and alleged lost profits from sales along with overall revenue for the plaintiff and determination of value to loss of reputation.

C. Discovery Sequence

Describe the parties' understanding regarding the timing of the discovery, and state whether it is anticipated that discovery will be phased to address different issues in stages. Paper discovery will be necessary prior to conducting depositions to facilitate the same. Plaintiff has already served discovery demands and defendant is in the process of preparing responses as well as serving its own discovery demands.

D. Written Discovery

Describe the written discovery demands which the parties contemplate serving under Rules 33, 34 and 36, including when they will be promulgated, that areas to be covered, and whether there is any need for any party to exceed the number of interrogatories permitted under Rule 33. Demands have already been served by Plaintiff. Defendants intend on serving a Demand for interrogatories, demand to produce and demand for expert witness disclosure.

E. Depositions

Set forth the parties' expectations regarding depositions, including the approximate number to be taken, their location, a general description of the deponents, and an indication of whether any non-party fact depositions are anticipated. Plaintiff will be seeking at least one deposition of a current employee of defendant. Two former employees with the most knowledge of the process will need to be deposed on a non-party basis. Defendant seeks at least two depositions of plaintiff.

F. Experts

Set forth the parties' expectations regarding the retention of experts, and identify any particular issues to be addressed by the court concerning the retention and exchange of the information regarding experts, including whether the parties seek a variance from the expert disclosure requirements of the form uniform pretrial scheduling order typically issued by the court (i.e., initial expert disclosure at least ninety days, responsive expert disclosures at least forty-five days, and rebuttal reports due at least thirty days, before the close of discovery). Experts will likely be involved in both liability and damages. Liability will cover the specific formulation of the product and canning process and damages will focus on economic costs to the plaintiff as a result of the product failure.

G. Electronic Discovery

Set forth the parties' understanding and expectations regarding discovery of electronically stored information. This description should include any agreements reached with respect to the retention of electronically stored information and the manner in which it will be produced, if requested. The parties should also identify any agreements regarding the manner in which electronically stored information subject to claims of privilege or work product protection will be handled, and whether a court order will be requested, either on stipulation or otherwise, to address this issue. If an agreement has been reached on the entry of such an order, provide a brief description of the provisions which will be included in a proposed order. This issue has not been addressed by the parties to date.

H. Protective Orders

If the parties anticipate requesting a protective order from the court pursuant to Rule 26(c), describe the basis for the request and nature of the proposed protective order.

None anticipated at this time.

I. Anticipated Issues Requiring Court Intervention

Provide a brief description of any discovery related issues which, the parties reasonably anticipate, may require court intervention.

None anticipated at this time.

16. **Is it possible to reduce the length of trial by stipulations, use of summaries or statements, or other expedited means or presenting evidence? Is it feasible and desirable to bifurcate issues for trial?**

No

17. **Are there any related cases pending before the Judges of this Court?**

No

18. **In Class Actions, when and how will the class be certified?**

Not applicable

19. **What are the prospects for settlement? Please check below the prospect for settlement:**

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ 7 ☐ 8 ☐ 9 ☐ 10 ☐
(Very unlikely → → → → → Likely)

A. Settlement cannot be evaluated prior to 04/16/24 (Date).

- B. How can settlement efforts be assisted?
Use of a mediator once paper discovery is complete

(Do not indicate any monetary amounts at this time, settlement will be explored by the Magistrate Judge at the time of the initial status conference)

Complete Question 19 only if your filing order Cover Sheet was checked as an ADR Track case – Subject to Mandatory Mediation under General Order #47.

20. If your case was selected as a qualifying mandatory mediation case, confirm that you have:

- A. Reviewed General Order #47 Yes ☒ No ☐
- B. Reviewed the List of Court Approved Mediators available on the NDNY website? Yes ☒ No ☐
- C. Prepared to discuss with the Court, at the conference, whether your case should be opted out of the program? Yes ☒ No ☐
- D. Discussed the time frame needed to complete Mandatory Mediation? Yes ☒ No ☐

Pursuant to Fed. R. Civ. P. 25(f), a meeting was held on 03/12/24
and was attended by: (Date)

Joseph Churgin, Esq. _____ for plaintiff(s)

Eric Kurtz, Esq. _____ for defendant(s)

_____ for defendant(s)

At the Rule 16(b) conference, the Court will issue an order directing the future proceedings in this action. The parties are advised that failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rules of Civil Procedure 16(f).

Please detach this case management plan form and file electronically with the clerk no later than seven (7) days in advance of the conference date.